

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 327**

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**Introduced by Assembly Member Davis**

February 10, 2011

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~~An act to amend Section 25210.7 of the Health and Safety Code, relating to hazardous waste.~~ *An act to amend Sections 667 and 1170.12 of the Penal Code, relating to sentencing.*

LEGISLATIVE COUNSEL'S DIGEST

AB 327, as amended, Davis. ~~Hazardous waste: perchlorate.~~  
*Sentencing: three strikes.*

*Existing law, contained in 2 initiative statutes, commonly known as the Three Strikes law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply. Existing law requires that if a defendant has 2 or more prior violent or serious felony convictions, the term for the current felony conviction shall be an indeterminate term of imprisonment in the state prison for life with a minimum term to be served, as specified.*

*This bill would provide that a defendant who has 2 or more prior violent or serious felony convictions shall receive the enhanced indeterminate life sentence only if the defendant's current conviction is for a serious or violent felony, as defined.*

*The bill would provide that it would become effective only when submitted to, and approved by, the voters, and would require the Secretary of State to submit the measure to the voters at the November 6, 2012, statewide general election.*

~~Existing law, administered by the Department of Toxic Substances Control, prohibits the management of hazardous waste and a violation~~

~~of the hazardous waste control law is a crime. The Perchlorate Contamination Prevention Act prohibits a person from managing perchlorate materials, except in compliance with the best management practices specified in the regulations adopted by the department.~~

~~This bill would make nonsubstantive changes and delete obsolete provisions in that act.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 667 of the Penal Code is amended to  
2     read:

3     667. (a) (1) In compliance with subdivision (b) of Section  
4     1385, any person convicted of a serious felony who previously  
5     has been convicted of a serious felony in this state or of any offense  
6     committed in another jurisdiction which includes all of the elements  
7     of any serious felony, shall receive, in addition to the sentence  
8     imposed by the court for the present offense, a five-year  
9     enhancement for each such prior conviction on charges brought  
10    and tried separately. The terms of the present offense and each  
11    enhancement shall run consecutively.

12    (2) This subdivision shall not be applied when the punishment  
13    imposed under other provisions of law would result in a longer  
14    term of imprisonment. There is no requirement of prior  
15    incarceration or commitment for this subdivision to apply.

16    (3) The Legislature may increase the length of the enhancement  
17    of sentence provided in this subdivision by a statute passed by  
18    majority vote of each house thereof.

19    (4) As used in this subdivision, “serious felony” means a serious  
20    felony listed in subdivision (c) of Section 1192.7.

21    (5) This subdivision shall not apply to a person convicted of  
22    selling, furnishing, administering, or giving, or offering to sell,  
23    furnish, administer, or give to a minor any  
24    methamphetamine-related drug or any precursors of  
25    methamphetamine unless the prior conviction was for a serious  
26    felony described in subparagraph (24) of subdivision (c) of Section  
27    1192.7.

28    (b) It is the intent of the Legislature in enacting subdivisions  
29    (b) to (i), inclusive, to ensure longer prison sentences and greater

1 punishment for those who commit a felony and have been  
2 previously convicted of serious and/or violent felony offenses.

3 (c) Notwithstanding any other law, if a defendant has been  
4 convicted of a felony and it has been pled and proved that the  
5 defendant has one or more prior felony convictions as defined in  
6 subdivision (d), the court shall adhere to each of the following:

7 (1) There shall not be an aggregate term limitation for purposes  
8 of consecutive sentencing for any subsequent felony conviction.

9 (2) Probation for the current offense shall not be granted, nor  
10 shall execution or imposition of the sentence be suspended for any  
11 prior offense.

12 (3) The length of time between the prior felony conviction and  
13 the current felony conviction shall not affect the imposition of  
14 sentence.

15 (4) There shall not be a commitment to any other facility other  
16 than the state prison. Diversion shall not be granted nor shall the  
17 defendant be eligible for commitment to the California  
18 Rehabilitation Center as provided in Article 2 (commencing with  
19 Section 3050) of Chapter 1 of Division 3 of the Welfare and  
20 Institutions Code.

21 (5) The total amount of credits awarded pursuant to Article 2.5  
22 (commencing with Section 2930) of Chapter 7 of Title 1 of Part  
23 3 shall not exceed one-fifth of the total term of imprisonment  
24 imposed and shall not accrue until the defendant is physically  
25 placed in the state prison.

26 (6) If there is a current conviction for more than one felony  
27 count not committed on the same occasion, and not arising from  
28 the same set of operative facts, the court shall sentence the  
29 defendant consecutively on each count pursuant to subdivision  
30 (e).

31 (7) If there is a current conviction for more than one serious or  
32 violent felony as described in paragraph (6), the court shall impose  
33 the sentence for each conviction consecutive to the sentence for  
34 any other conviction for which the defendant may be consecutively  
35 sentenced in the manner prescribed by law.

36 (8) Any sentence imposed pursuant to subdivision (e) will be  
37 imposed consecutive to any other sentence which the defendant  
38 is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if:

(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony.

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

1 (e) For purposes of subdivisions (b) to (i), inclusive, and in  
2 addition to any other enhancement or punishment provisions which  
3 may apply, the following shall apply where a defendant has a prior  
4 felony conviction:

5 (1) If a defendant has one prior felony conviction, *as defined*  
6 *in subdivision (d)*, that has been pled and proved, the determinate  
7 term or minimum term for an indeterminate term shall be twice  
8 the term otherwise provided as punishment for the current felony  
9 conviction.

10 (2) (A) If a defendant has two or more prior felony convictions,  
11 as defined in subdivision (d), that have been pled and proved, the  
12 term for ~~the~~ a current felony conviction *for an offense defined in*  
13 *subdivision (c) of Section 667.5 as a violent felony or in subdivision*  
14 *(c) of Section 1192.7 as a serious felony* shall be an indeterminate  
15 term of life imprisonment with a minimum term of the  
16 indeterminate sentence calculated as the greater of:

17 (i) Three times the term otherwise provided as punishment for  
18 each current felony conviction subsequent to the two or more prior  
19 felony convictions.

20 (ii) Imprisonment in the state prison for 25 years.

21 (iii) The term determined by the court pursuant to Section 1170  
22 for the underlying conviction, including any enhancement  
23 applicable under Chapter 4.5 (commencing with Section 1170) of  
24 Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

25 (B) The indeterminate term described in subparagraph (A) shall  
26 be served consecutive to any other term of imprisonment for which  
27 a consecutive term may be imposed by law. Any other term  
28 imposed subsequent to any indeterminate term described in  
29 subparagraph (A) shall not be merged therein but shall commence  
30 at the time the person would otherwise have been released from  
31 prison.

32 (f) (1) Notwithstanding any other law, subdivisions (b) to (i),  
33 inclusive, shall be applied in every case in which a defendant has  
34 a prior felony conviction as defined in subdivision (d). The  
35 prosecuting attorney shall plead and prove each prior felony  
36 conviction except as provided in paragraph (2).

37 (2) The prosecuting attorney may move to dismiss or strike a  
38 prior felony conviction allegation in the furtherance of justice  
39 pursuant to Section 1385, or if there is insufficient evidence to  
40 prove the prior conviction. If upon the satisfaction of the court that

1 there is insufficient evidence to prove the prior felony conviction,  
2 the court may dismiss or strike the allegation.

3 (g) Prior felony convictions shall not be used in plea bargaining  
4 as defined in subdivision (b) of Section 1192.7. The prosecution  
5 shall plead and prove all known prior felony convictions and shall  
6 not enter into any agreement to strike or seek the dismissal of any  
7 prior felony conviction allegation except as provided in paragraph  
8 (2) of subdivision (f).

9 (h) All references to existing statutes in subdivisions (c) to (g),  
10 inclusive, are to statutes as they existed on June 30, 1993.

11 (i) If any provision of subdivisions (b) to (h), inclusive, or the  
12 application thereof to any person or circumstance is held invalid,  
13 that invalidity shall not affect other provisions or applications of  
14 those subdivisions which can be given effect without the invalid  
15 provision or application, and to this end the provisions of those  
16 subdivisions are severable.

17 (j) The provisions of this section shall not be amended by the  
18 Legislature except by statute passed in each house by rollcall vote  
19 entered in the journal, two-thirds of the membership concurring,  
20 or by a statute that becomes effective only when approved by the  
21 electors.

22 *SEC. 2. Section 1170.12 of the Penal Code is amended to read:*

23 1170.12. (a) Notwithstanding any other provision of law, if a  
24 defendant has been convicted of a felony and it has been pled and  
25 proved that the defendant has one or more prior felony convictions,  
26 as defined in subdivision (b), the court shall adhere to each of the  
27 following:

28 (1) There shall not be an aggregate term limitation for purposes  
29 of consecutive sentencing for any subsequent felony conviction.

30 (2) Probation for the current offense shall not be granted, nor  
31 shall execution or imposition of the sentence be suspended for any  
32 prior offense.

33 (3) The length of time between the prior felony conviction and  
34 the current felony conviction shall not affect the imposition of  
35 sentence.

36 (4) There shall not be a commitment to any other facility other  
37 than the state prison. Diversion shall not be granted nor shall the  
38 defendant be eligible for commitment to the California  
39 Rehabilitation Center as provided in Article 2 (commencing with

1 Section 3050) of Chapter 1 of Division 3 of the Welfare and  
2 Institutions Code.

3 (5) The total amount of credits awarded pursuant to Article 2.5  
4 (commencing with Section 2930) of Chapter 7 of Title 1 of Part  
5 3 shall not exceed one-fifth of the total term of imprisonment  
6 imposed and shall not accrue until the defendant is physically  
7 placed in the state prison.

8 (6) If there is a current conviction for more than one felony  
9 count not committed on the same occasion, and not arising from  
10 the same set of operative facts, the court shall sentence the  
11 defendant consecutively on each count pursuant to this section.

12 (7) If there is a current conviction for more than one serious or  
13 violent felony as described in paragraph (6) of this subdivision,  
14 the court shall impose the sentence for each conviction consecutive  
15 to the sentence for any other conviction for which the defendant  
16 may be consecutively sentenced in the manner prescribed by law.

17 (8) Any sentence imposed pursuant to this section will be  
18 imposed consecutive to any other sentence which the defendant  
19 is already serving, unless otherwise provided by law.

20 (b) Notwithstanding any other provision of law and for the  
21 purposes of this section, a prior conviction of a felony shall be  
22 defined as:

23 (1) Any offense defined in subdivision (c) of Section 667.5 as  
24 a violent felony or any offense defined in subdivision (c) of Section  
25 1192.7 as a serious felony in this state. The determination of  
26 whether a prior conviction is a prior felony conviction for purposes  
27 of this section shall be made upon the date of that prior conviction  
28 and is not affected by the sentence imposed unless the sentence  
29 automatically, upon the initial sentencing, converts the felony to  
30 a misdemeanor. None of the following dispositions shall affect the  
31 determination that a prior conviction is a prior felony for purposes  
32 of this section:

33 (A) The suspension of imposition of judgment or sentence.

34 (B) The stay of execution of sentence.

35 (C) The commitment to the State Department of Health Services  
36 as a mentally disordered sex offender following a conviction of a  
37 felony.

38 (D) The commitment to the California Rehabilitation Center or  
39 any other facility whose function is rehabilitative diversion from  
40 the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, and

(B) The prior offense is

(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or

(ii) listed in this subdivision as a felony, and

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:

(1) If a defendant has one prior felony conviction, *as defined in paragraph (1) of subdivision (b)*, that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) If a defendant has two or more prior felony convictions, as defined in paragraph (1) of subdivision (b), that have been pled and proved, the term for the current felony conviction *for an offense defined in subdivision (c) of Section 667.5 as a violent felony or in subdivision (c) of Section 1192.7 as a serious felony* shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of

(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions, or

(ii) twenty-five years or



(iii) the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(e) Prior felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (d).

*SEC. 3. (a) Sections 1 and 2 of this act affect initiative statutes, and shall become effective only when submitted to, and approved by, the voters of California, pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.*

*(b) The Secretary of State shall submit Sections 1 and 2 of this act to the voters for approval at the November 6, 2012, statewide general election.*

~~SECTION 1. Section 25210.7 of the Health and Safety Code is amended to read:~~

~~25210.7. A person shall not manage perchlorate materials unless the management complies with the best management~~

- 1 ~~practices specified in the regulations adopted by the department~~
- 2 ~~pursuant to Section 25210.6.~~